

**INTRODUCTION TO ARTICLES: I) EMPLOYMENT OF TURNAROUND  
MANAGEMENT COMPANIES, "DISINTERESTEDNESS" ISSUES UNDER  
THE BANKRUPTCY CODE, & II) ISSUES UNDER DELAWARE  
GENERAL CORPORATION LAW AND (II) INDEMNIFICATION AND  
EXCULPATION OF PROFESSIONAL PERSONS IN BANKRUPTCY  
CASES**

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Most large debtors in possession seek the aid of turnaround managers and financial advisors prior to and during their chapter 11 reorganizations. The first article addresses the proper structure of the engagement of turnaround management companies that is necessary to insure the continued availability of such professionals during the debtor in possession's chapter 11 bankruptcy case. The second article addresses the permissible scope of indemnification and exculpation of such professionals in the wake of the \$185 million settlement between the debtor in possession's financial advisor and the chapter 7 trustee in the *In re Merry-Go Round* bankruptcy case.

The first article addresses a number of issues concerning whether turnaround management companies and individual management consultants are eligible for employment as "professional persons" under section 327 of the Bankruptcy Code. The issues focus on "disinterestedness" issues created by the structure under which debtors in possession engage management companies and their individual consultants. Specifically, this article suggests that management companies are eligible for employment under section 327(a) where the individual consultants, rather than the management company, are employed as officers of the debtor under section 327(b), provided that the management company is otherwise disinterested. The article concludes that a debtor in possession must be careful to separate the retention of any individual consultants as directors or salaried "officers" under section 327(b) from the retention of the consultants' management firm under section 327(a). By collapsing those engagements, a debtor in possession may render the management firm ineligible for employment under section 327(a), forcing the debtor in possession to retain a new turnaround management company at the initial, critical stage in the bankruptcy case. The first article also addresses whether the debtor in possession's board of directors may breach its fiduciary duty under the

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Delaware General Corporation Law by abdicating its duty to manage the company and appoint officers where the board authorizes a management company to appoint officers, particularly where the board retains no oversight with respect to such appointments.

In the wake of the *In re Merry-Go-Round Enterprises, Inc.* settlement, the second article focuses on the permissible scope of indemnification and exculpation provisions in engagement agreements between debtors in possession and their professionals, including management companies and financial advisors. The articles suggest that such provisions should be scrutinized (i) under applicable state corporation law and (ii) for "reasonableness" under section 328(a) of the Bankruptcy Code.